

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19/3/2019

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Petition No.7612 of 2019

G. Dhanasekar ... Petitioner

Vs

1. The Secretary
Highways Department
Government of Tamil Nadu
Fort St. George
Chennai 600 009.
2. The District Collector
Kancheepuram 631 502.
3. The Commissioner
Pallavaram Municipality
Pallavaram
Chennai 600 117. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records relating to the proceeding of the third respondent viz., R.C.No.0002/2017/E1 dated 18/2/2019 and thereby direct the third respondent to dispose of the petitioner's representation dated 28/2/2019, consequentially further issue a direction, directing the respondents 2 and 3 to erect a commuters shelter at ESI bus stand (near Saravana Stores), Chromepet or G.H Bus stand opposite to Chromepet Government Hospital with the funds sanctioned out of MLA (Members of Legislative Assembly) Constituency Development fund allotted to Pallavaram Constituency.

For petitioner ... Mr.M.Ganesan

For respondents ... Mr.E.Manoharan
Additional Government Pleader
for R.R.1 and 2

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O R D E R

(Order of the Court was made by S.Manikumar,J)

Claiming himself to be a public interest litigant, petitioner has sought for a writ of certiorarified mandamus, to quash the proceeding of the third respondent, in R.C.No.0002/2017/E1, dated 18/2/2019; direct the third respondent, to dispose of the petitioner's representation, dated 28/2/2019 and to direct the respondents 2 and 3, to erect a commuters shelter at ESI bus stand (near Saravana Stores), Chromepet or G.H Bus stand opposite to Chromepet Government Hospital with the funds sanctioned out of MLA (Members of Legislative Assembly) Constituency Development fund allotted to Pallavaram Constituency.

2. It is stated in the petition that part of Grand Southern Trunk Road falls within Pallavaram Constituency. In the said road, abutting the Chromepet railway station, there is a bus stand named as Chromepet bus stand, which caters to the need of commuters, who travel towards Tambaram destination through Metropolitan Transport Corporation buses. Likewise, there is another bus stand named as Chromepet Mufussil bus stand, which is near and close to Metropolitan Transport Corporation bus stand, which facilitates the passengers to board the bus to travel to the southern districts of Tamil Nadu.

3. In order to provide comfort to the passengers, who board buses from the said bus stand, bus shelters were provided and Metropolitan Transport Corporation bus shelter was erected, out of the funds sanctioned from the members of legislative assemblies constituency development fund.

4. Petitioner had noticed some construction activities were carried on, near Metropolitan Transport Corporation Bus stand and Muffusil bus stand. He approached the office of the third respondent and enquired about the details regarding constructing activities. It was disclosed that there was a proposal to erect a shelter connecting both the bus shelters, viz., Metropolitan Transport Corporation bus shelter and Chromepet Mufussil bus shelter, and thereby making it, as one big single unit from the fund sanctioned to the member of Legislative Assembly Pallavaram constituency.

5. Petitioner has contended that sanctioning of funds allotted to the present impugned work is of no use because the bus shelter which is already there for more than sufficient and therefore, there is no requirement for putting up an additional bus shelter in between two existing bus shelters. He has submitted that no public opinion was taken. He has further submitted that the recommendation by the second respondent for installation of such a bus shelter is not furnished, especially when the moffusil bus shelter is sparingly used.

6. The petitioner has contended that in view of the recent mushrooming of commercial buildings around Chromepet Junction, there is a huge demand for erection of a bus shelter near ESI bus stand close to Chromepet, Saravana Stores. He has stated that, on the opposite side of ESI bus stand, there is also the need for erecting a bus shelter for those who intended to travel towards City of Chennai. The petitioner has suggested that, near Chromepet GH on either side of the road the existing bus shelter is a small one and therefore, pulling up a bus shelter in the said bus stand would be of more use.

7. Heard Mr.M.Ganesan, learned counsel for the petitioner and Mr.E.Manoharan, learned Additional Government Pleader for the respondents 1 and 2.

8. It is well settled that Courts cannot run Governments. The Hon'ble Supreme Court, time and again, reminded that the Judges must not try to perform legislative or executive function.

9. In Narmada Bachao Andolan Vs. Union of India and Others, reported in {2000 (10) SCC - 664}, the Hon'ble Supreme Court observed as follows:-

"232. While protecting the rights of the people from being violated in any manner utmost care has to be taken that the Court does not transgress its jurisdiction. There is, in our constitutional framework a fairly clear demarcation of powers. The Court has come down heavily whenever the executive has sought to impinge upon the Court's jurisdiction.

233. At the same time, in exercise of its enormous power, the Court should not be called upon to or undertake governmental duties or functions. The Courts cannot run the Government nor can the administration indulge in abuse or non-use of power and get away with it. The essence of judicial review is a

constitutional fundamental. The role of the higher judiciary under values of the Constitution and the rights of Indians. The Courts must therefore, act within their judicially permissible limitations to uphold the rule of law and harness their power in public interest. It is precisely for this reason that it has been consistently held by this Court that in matters of policy the Court will not interfere. When there is a valid law requiring the Government to act in a particular manner the Court ought not to, without striking down the law, give any direction which is not in accordance with law. In other words, the Court itself is not above the law.

234. In respect of public projects and policies which are initiated by the Government the Courts should not become an approval authority. Normally such decisions are taken by the Government after due care and consideration. In a democracy welfare of the people at large, and not merely of a small section of the society, has to be the concern of a responsible Government. If a considered policy decision has been taken, which is not in conflict with any law or is not mala fide, it will not be in public interest to require the Court to go into and investigate those areas which are the function of the executive. For any project which is approved after due deliberation, the Court should not refrain from being asked to review the decision just because a petitioner in filing a PIL alleges that such a decision should not have been taken because an opposite view against the undertaking of the project, which view may have been considered by the Government is possible. When two or more options or views are possible and after considering them the Government takes a policy decision it is then not the function of the Court to go into the matter afresh and, in a way, sit in appeal over such a policy decision."

10. The above mentioned observations have been quoted with approval by the Hon'ble Supreme Court in BALCO EMPLOYEES' UNION (REGD) Vs. UNION OF INDIA AND OTHERS {2002 (2) SCC - 333}.

11. In DIVISIONAL MANAGER, ARAVALI GOLF CLUB AND ANOTHER {2008 (1) SCC - 683}, in paragraphs Nos.17, 19, 20 and 22, the

Hon'ble Supreme Court held thus:-

"17. Before parting with this case, we would like to make some observations about the limits of the powers of the judiciary. We are compelled to make these observations because we are repeatedly coming across cases where judges are unjustifiably trying to perform executive or legislative functions. In our opinion this is clearly unconstitutional. In the name of judicial activism judges cannot cross their limits and try to take over functions which belong to another organ of the State.

19. Under our Constitution, the legislature, the executive and the judiciary all have their own broad spheres of operation. Ordinarily, it is not proper for any of these three organs of the State to encroach upon the domain of another, otherwise the delicate balance in the Constitution will be upset, and there will be a reaction.

20. Judges must know their limits and must not try to run the Government. They must have modesty and humility, and not behave like emperors. There is broad separation of powers under the Constitution and each organ of the State - the legislature, the executive and the judiciary - must have respect for the other and must not encroach into each other's domains.

22. In Tata Cellular Vs. Union of India (vide AIR para 113 : SCC para 94), this Court observed that the modern trend points to judicial restraint in administrative action. The same view has been taken in a large number of other decisions also, but it is unfortunate that many Courts are not following these decisions and are trying to perform legislative or executive functions. In our opinion adjudication must be done within the system of historically validated restraints and conscious minimisation of the Judges' preferences. The Court must not embarrass the administrative authorities and must realise that administrative authorities have expertise in the field of administration while the Court does not. In the words of Neely VJ (Scc p.681, para 82).

"82.... I have very few illusions about my own limitations as a Judge ... I am not an accountant, electrical engineer, financier, banker, expect Judges intelligently to review a

5000 page record addressing the intricacies of a public utility operation."

It is not the function of a Judge to act as a superboard, or with the zeal of a pedantic schoolmaster substituting its judgment for that of the administrator."

12. In COMMON CAUSE (A REGD. SOCIETY) VS. UNION OF INDIA AND OTHERS, {2008 (5) SCC - 511}, at paragraph No.40, the Hon'ble Supreme Court, held thus:-

"The justification given for judicial activism is that the executive and legislature have failed in performing their functions. Even if this allegations is true, does it justify the judiciary in taking over the functions of the legislature or executive? In our opinion it does not: firstly, because that would be in violation of the high constitutional principle of separation of powers between the three organs of the State, and secondly, because the judiciary has neither the expertise nor the resources for this. If the legislature or executive are not functioning properly it is for the people to correct the defects by exercising their franchise properly in the next elections and voting for candidates who will fulfil their expectations, or by other lawful means e.g., peaceful demonstrations and agitations, but the remedy is surely not by the judiciary in taking over the functions of the other organs."

13. Courts must not act as an appellate authority on policy decision of the government. It is for the government to decide how to utilize the funds. On the facts and circumstances of this case, it is for the MLA to suggest as to how the funds allotted to him, for the development of the Constituency, must be spent. Writ Courts cannot interfere in such matters unless the decision is so arbitrary that it shocks the conscience of the Court. No public opinion for construction or expansion of an existing bus stand, from out of the MLA's fund is contemplated and the averment is not substantiated. Suggestions made in the affidavit would not give rise to cause for a writ petition. Decision to expand an existing bus stand, cannot be said to be arbitrary.

14. In view of the decisions, which this Court has taken note of, instant writ petition cannot be entertained and accordingly, the same is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary
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Chennai 600 009.
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3. The Commissioner
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+1cc to Government Pleader sr.26256

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nr 18/06/2019

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